

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TSUNG H HSU,

Plaintiff,

v.

NORTHWESTERN MUTUAL LIFE  
INSURANCE COMPANY,

Defendant.

Case No. 2:20-cv-00088-TSZ

STIPULATED PROTECTIVE  
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

STIPULATED PROTECTIVE ORDER

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treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” AND “ATTORNEYS’ EYES ONLY” MATERIAL<sup>1</sup>

A. “Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

- (a) Plaintiff’s medical records and related personal medical information;
- (b) Plaintiff’s partnership, business, employee, and personnel records including, but not limited to, Social Security numbers, birth date and birth month, payroll and salary, tax information/returns, investigations, complaints, and/or reports;
- (c) financial, property, and proprietary documents of Plaintiff;
- (d) non-public court records;
- (e) financial, trade secret, and otherwise proprietary documents, information, and internal memoranda of Defendant, including but not limited to Defendant’s Disability Benefits Guidelines and Mutual Knowledge, as well as its claims handling and underwriting policies and procedures;
- (f) sensitive and/or non-public contractual terms between Plaintiff and Defendant, as well as non-parties;
- (g) pricing information;
- (h) marketing plans, business plans, forecasts, and business strategies;

<sup>1</sup> The inclusion of any category of document(s) or information within this section is by no means an admission or acknowledgement by either party that such information is relevant or discoverable, or that such information is admissible evidence.

- (i) sensitive information and communications relating to products and services, including, but not limited to, advertising data, which in the hands of competitors would be valuable;
- (j) other non-public business information that is treated confidentially by the producing party in the ordinary course of business, the disclosure of which may cause the producing party to be commercially disadvantaged or prejudiced;
- (k) portions or all of deposition testimony and transcripts falling into any of the above categories; and
- (l) portions or all of a party's written interrogatories, requests for admission, requests for productions, and answers and responses thereto falling into categories (a)-(j), above.

B. "Attorneys' Eyes Only" material shall mean any Confidential material which the producing party reasonably believes to be so competitively sensitive that it is entitled to additional protection via an "Attorneys' Eyes Only" designation.

### 3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as other employees of counsel's firm to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

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(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Disclosure of “ATTORNEYS’ EYES ONLY” materials. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any “ATTORNEYS’ EYES ONLY” material only to:

(a) the receiving party’s counsel of record in this action, as well as other employees of counsel’s firm to whom it is reasonably necessary to disclose the information for this litigation;

(b) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court, court personnel, and court reporters and their staff;

(d) copy or imaging services retained by counsel to assist in the duplication of material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any material to third parties and to immediately return all originals and copies of any confidential material;

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits

1 to depositions that reveal confidential material must be separately bound by the  
 2 court reporter and may not be disclosed to anyone except as permitted under this  
 3 agreement;

4 (f) the author or recipient of a document containing the information  
 5 or a custodian or other person who otherwise possessed or knew the information.

6 4.4 Filing Confidential Material. Before filing confidential material or  
 7 discussing or referencing such material in court filings, the filing party shall confer  
 8 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to  
 9 determine whether the designating party will remove the confidential designation,  
 10 whether the document can be redacted, or whether a motion to seal or stipulation  
 11 and proposed order is warranted. During the meet and confer process, the  
 12 designating party must identify the basis for sealing the specific confidential  
 13 information at issue, and the filing party shall include this basis in its motion to seal,  
 14 along with any objection to sealing the information at issue. Local Civil Rule 5(g)  
 15 sets forth the procedures that must be followed and the standards that will be  
 16 applied when a party seeks permission from the court to file material under seal. A  
 17 party who seeks to maintain the confidentiality of its information must satisfy the  
 18 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion  
 19 to seal. Failure to satisfy this requirement will result in the motion to seal being  
 20 denied, in accordance with the strong presumption of public access to the Court's  
 21 files.

## 22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.  
 24 Each party or non-party that designates information or items for protection under  
 25 this agreement must take care to limit any such designation to specific material that  
 26 qualifies under the appropriate standards. The designating party must designate for  
 protection only those parts of material, documents, items, or oral or written

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1 communications that qualify, so that other portions of the material, documents,  
2 items, or communications for which protection is not warranted are not swept  
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations  
5 that are shown to be clearly unjustified or that have been made for an improper  
6 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to  
7 impose unnecessary expenses and burdens on other parties) expose the designating  
8 party to sanctions.

9 If it comes to a designating party's attention that information or items that it  
10 designated for protection do not qualify for protection, the designating party must  
11 promptly notify all other parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in  
13 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below, and section 5.3),  
14 or as otherwise stipulated or ordered, disclosure or discovery material that qualifies  
15 for protection under this agreement must be clearly so designated before or when  
16 the material is disclosed or produced.

17 (a) Information in documentary form: (*e.g.*, paper or electronic  
18 documents and deposition exhibits, but excluding transcripts of depositions or other  
19 pretrial or trial proceedings), the designating party must affix the word  
20 "CONFIDENTIAL" to each page that contains confidential material. If only a portion  
21 or portions of the material on a page qualifies for protection, the producing party  
22 also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
23 markings in the margins).

24 (b) Testimony given in deposition or in other pretrial proceedings:  
25 the parties and any participating non-parties must identify on the record, during the  
26 deposition or other pretrial proceeding, all protected testimony, without prejudice to  
their right to so designate other testimony after reviewing the transcript. Any party

1 or non-party may, within fifteen days after receiving the transcript of the deposition  
 2 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,  
 3 as confidential. If a party or non-party desires to protect confidential information at  
 4 trial, the issue should be addressed during the pre-trial conference.

5 (c) Other tangible items: the producing party must affix in a  
 6 prominent place on the exterior of the container or containers in which the  
 7 information or item is stored the word "CONFIDENTIAL." If only a portion or  
 8 portions of the information or item warrant protection, the producing party, to the  
 9 extent practicable, shall identify the protected portion(s).

10 5.3 Designating Deposition Testimony. Subject to the parameters in  
 11 Section 5.1, any party or non-party may within fourteen (14) days after receiving a  
 12 deposition transcript designate portions of the transcript as "CONFIDENTIAL" by  
 13 notifying the other party in writing of the designated portions.

14 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 15 failure to designate qualified information or items does not, standing alone, waive  
 16 the designating party's right to secure protection under this agreement for such  
 17 material. Upon timely correction of a designation, the receiving party must make  
 18 reasonable efforts to ensure that the material is treated in accordance with the  
 19 provisions of this agreement.

## 20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any party or non-party may challenge a  
 22 designation of confidentiality at any time. Unless a prompt challenge to a  
 23 designating party's confidentiality designation is necessary to avoid foreseeable,  
 24 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
 25 delay of the litigation, a party does not waive its right to challenge a confidentiality  
 26 designation by electing not to mount a challenge promptly after the original  
 designation is disclosed.



6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

## 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must, unless prohibited by law or court order:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

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(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

So long as the party served with a subpoena or court order complies with subsections (a) through (c), above, the party shall not be in violation of this Agreement if the party discloses the information pursuant to the subpoena or court order.

#### 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

#### 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

#### 10. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party,

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1 including all copies, extracts and summaries thereof. Alternatively, the parties may  
 2 agree upon appropriate methods of destruction.

3 Notwithstanding this provision, counsel (including in-house counsel for  
 4 Northwestern Mutual) are each entitled to retain one archival copy of all documents  
 5 filed with the court, trial, deposition, and hearing transcripts, correspondence,  
 6 deposition and trial exhibits, expert reports, attorney work product, and consultant  
 7 and expert work product, even if such materials contain confidential material.  
 8 Additionally, Northwestern Mutual may retain an archival copy of all confidential  
 9 material as part of its claim file.

10 The confidentiality obligations imposed by this agreement shall remain in  
 11 effect until a designating party agrees otherwise in writing or a court orders  
 12 otherwise.

13  
 14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 DATED: June 10, 2020

s/ Jesse Cowell  
 Attorneys for Plaintiff

16  
 17 DATED: June 10, 2020

s/ Sarah E. Cox  
 Attorneys for Defendant

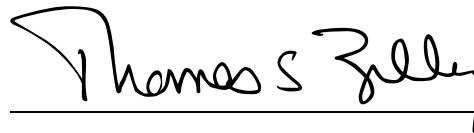
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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: June 12, 2020.

A handwritten signature in black ink that reads "Thomas S. Zilly". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas S. Zilly  
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under  
 penalty of perjury that I have read in its entirety and understand the Stipulated  
 Protective Order that was issued by the United States District Court for the Western  
 District of Washington on June \_\_, 2020 [date] in the case of Tsung H Hsu v.  
 Northwestern Mutual Life Insurance Company, Case No. 2:20-cv-00088-TSZ. I  
 agree to comply with and to be bound by all the terms of this Stipulated Protective  
 Order and I understand and acknowledge that failure to so comply could expose me  
 to sanctions and punishment in the nature of contempt. I solemnly promise that I  
 will not disclose in any manner any information or item that is subject to this  
 Stipulated Protective Order to any person or entity except in strict compliance with  
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
 for the Western District of Washington for the purpose of enforcing the terms of this  
 Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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